

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**TIMOTHY BURKE,
on behalf of himself and all other
similarly situated current and former employees,**

Plaintiffs,

v.

**Civil Action No: 3:16cv152-NBB-JMV
JURY TRIAL DEMANDED**

MANAGEMENT & TRAINING CORPORATION

Defendants.

**PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION
AND NOTICE TO PUTATIVE PLAINTIFFS**

Plaintiff, Timothy Burke, pursuant to 29 U.S.C. § 216(b), on behalf of himself and similarly situated persons, respectfully files this Motion for Conditional Certification. Defendant classified its employees holding the job title of Lieutenants as “exempt” from the overtime provisions of the Fair Labor Standards Act (“FLSA”) and paid Lieutenants on a salary basis. Defendant’s Lieutenants regularly worked in excess of forty (40) hours in any given week and were not paid overtime premiums. Defendant’s willfully misclassified Plaintiff and other similar situated Lieutenants as “exempt” although it can prove no applicable exemption. Accordingly, Plaintiff and other similar situated Lieutenants were not paid overtime premiums for hours worked in excess of forty (40) in any given workweek.

Aside from his original Complaint, Mr. Burke relies upon the following evidence in support of his motion:

- Declaration of Timothy Burke, former Lieutenant at MTC's Marshall County Correctional Facility, attached to Plaintiff's Motion as Exhibit "A";
- Declaration of Grover Cox, Jr., former Lieutenant at MTC's Walnut Grove Correctional Facility, attached to Plaintiff's Motion as Exhibit "B";
- Declaration of LeDonnie Ruffin, former Lieutenant at MTC's East Mississippi Correctional Facility, attached to Plaintiff's Motion as Exhibit "C";
- Declaration of Derelle Grady, former Lieutenant at MTC's East Mississippi Correctional Facility, attached to Plaintiff's Motion as Exhibit "D";
- Declaration of Julius Anderson, former Lieutenant at MTC's Wilkinson County Correctional Facility, attached to Plaintiff's Motion as Exhibit "E";
- Excerpts from Fed. R. Civ. P. 30(b)(6) Deposition of Stephanie Hall, attached to Plaintiff's Motion as Exhibit "F";
- MTC's Responses to First Set of Request for Admissions, attached to Plaintiff's Motion as Exhibit "G";
- MTC's Policies, Exhibits "C through V" and MTC's Lieutenant Positions Descriptions, Collective Exhibit "W" in MTC's Responses to First Set of Requests for Production of Documents, attached to Plaintiff's Motion as Exhibit "H".

All of the evidence conclusively establishes that Mr. Burke is similarly situated to Defendant's former and current Lieutenants throughout the State of Mississippi, all of whom were paid on a salary basis, misclassified as exempt and not paid overtime for hours worked over forty. Therefore, Plaintiff prays that the Court:

1. Conditionally certify a collective action and approving the notice to the putative class defined as:

All current and former employees holding the job title of Lieutenant who worked for Management & Training Corporation (“MTC”), from July 1, 2013 to the present, who were paid on a salary basis, worked over 40 hours in any given week and were not paid overtime, excluding only those Lieutenants employed solely as training lieutenants, investigative lieutenants, ARP lieutenants and fire and safety lieutenants.

2. Facilitate Notice to the putative class by:

- (a) Approving the attached Proposed Notice, attached hereto as Exhibit “T” and the Opt-In Form/Consent Form, attached hereto as Exhibit “J”;
- (b) Requiring Defendant to provide, within seven (7) days of the entry of an Order Conditionally Certifying a Collective Action the names, addresses and phone numbers (home and cell) of current and former employees of MTC holding the job title of Lieutenant from July 1, 2013 to the present, excluding only those Lieutenants employed solely as training lieutenants, investigative lieutenants, ARP lieutenants and fire and safety lieutenants;
- (c) Allowing Plaintiff up to twenty-one (21) days from the entry of an Order Conditionally Certifying a Collective Action to mail notice to putative class members and allowing the opt-in period to run for sixty (60) days from the date of mailing of the Notice; and
- (d) Requiring Defendant to post at its places of business, in a conspicuous area such as breakrooms, a copy of the Notice for sixty (60) days, from the date of the mailing of the Notices;

- (e) Requiring Defendant to attach both the Notice and the Opt-In Form/Consent Form to its current Lieutenants first pay stub following entry of an Order Conditionally Certifying a Collective Action; and
- (f) Requiring MTC to make the Opt-In Form/Consent Form available to its employees upon request of their human resources office.

WHEREFORE PREMISES CONSIDERED Plaintiff moves this Honorable Court for conditional certification of this cause as more particularly set forth above.

Respectfully submitted,

GLANKLER BROWN, PLLC

/s/Ross E. Webster

Ross E. Webster (MS #101957)
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119
(901) 525-1322 Telephone
(901) 525-2389 Facsimile
rwebster@glankler.com

-and-

CHAPMAN, LEWIS & SWAN, PLLC

/s/J. Harland Webster

J. Harland Webster, MSB # 102458
Post Office Box 428
Clarksdale, MS 38614
(662) 627-4105 telephone
(662) 627-4171 facsimile

*Attorney for Named Plaintiff, on behalf of himself
and all other similarly situated current and former
Lieutenants at MTC's Mississippi Facilities*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed with the Clerk of the Court using the ECF system which sent notification of the filing to the following party on the 20th day of January 2017:

Timothy Peebles
Daniel Coker Horton & Bell, P.A.
265 North Lamar Blvd, Suite R
Post Office Box 1396
Oxford, MS 38655-1396

/s/Ross E. Webster

Ross E. Webster

4847-3595-5005, v. 1